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Director of Data Processing and Accounts

General Counsel

New Jersey Transit Rail Operations, Inc.  
Employer Status

This is in reference to a request by New Jersey Transit Corporation for a determination as to the status of New Jersey Transit Rail Operations, Inc., as a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. As you are aware, we have corresponded with New Jersey Transit Corporation in the recent past but no prior opinion has been issued as to the employer status of that company.

New Jersey Transit Corporation (NJ TRANSIT) is an instrumentality of the State of New Jersey, organized pursuant to the New Jersey Public Transportation Act of 1979 (N.J.S.A. § 27:25-1 et seq.). Among NJ TRANSIT's powers as enumerated at N.J.S.A. § 27:25-5 is the operation of public transportation, either directly or indirectly through other instrumentalities or through contracts. It appears that in the past NJ TRANSIT conducted mass transit services (principally bus operations) itself, while commuter rail service was provided by Conrail under a service contract with NJ TRANSIT. However, pursuant to section 1136 of the Northeast Rail Service Act (NERSA), P.L. 97-35 (95 Stat. 647), Conrail was relieved of any legal obligation to operate commuter service effective January 1, 1983.

In a letter dated December 9, 1982, Ms. Patricia Sebron, NJ TRANSIT's Assistant Vice President, Human Resources, stated that in anticipation of Conrail's abandonment of commuter rail operations, NJ TRANSIT organized NJ TRANSIT Rail Operations, Inc. (NJTROI) to conduct commuter rail service; NJ TRANSIT Bus Operations, Inc. (NJTBOI); and a third entity to serve as NJ TRANSIT's corporate headquarters. Ms. Sebron advised that on January 1, 1983, the date NJTROI intended to begin commuter rail service, it planned to have approximately 3,000 employees. I had previously been informed that NJTROI began hiring management employees on July 6, 1982.

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Enclosed with Ms. Sebron's December 9, 1982 letter were 16 pages of documents pertaining to NJTROI's operations. These indicate that effective January 1, 1983, NJTROI intended to run eleven passenger lines over a total of 549.6 route miles. Three of these originate at Hoboken Terminal, New Jersey, and terminate at points in New York State; four originate at that terminal and terminate within the State of New Jersey; two originate in New York City and terminate at other points in New Jersey; and two originate at points in New Jersey other than Hoboken Terminal and terminate within New Jersey. Trains are exclusively diesel-powered on the three Hoboken, New Jersey, to New York lines, and on three lines lying entirely within New Jersey state boundaries; combined diesel and electric locomotive powered trains run on two lines; and the remaining four lines are exclusively powered by electric locomotives. Diesel service is provided over 317.2 route miles; electric service over 115.9 route miles; and combined diesel and electric trains run over 116.5 route miles. Amtrak intercity trains and NJTROI trains share the same terminal in New York City and stop jointly at five stations in New Jersey. NJTROI trains also share common stations with the Port Authority Trans-Hudson Corporation (PATH) at Hoboken and at Newark, New Jersey; with the Long Island Railroad in New York City; and with the Southeastern Pennsylvania Transportation Authority (SEPTA) at Trenton, New Jersey. NJTROI trains run over 208.5 miles of trackage owned by other entities, and Conrail has freight trackage rights over 341.1 miles of NJTROI track. NJTROI lines physically connect with Conrail, the Rahway Valley Railroad, the Morristown & Erie Railroad, and the Staten Island Railroad.

Section 1(a) of the Railroad Retirement Act provides:

"(a) (1) The term 'employer' shall include--

"(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

\* \* \* \* \*

"(2) Notwithstanding the provisions of subdivision (1) of this subsection, the term 'employer' shall not include--

"(ii) any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general diesel-railroad system of

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transportation, but shall not exclude any part of the general diesel-railroad system of transportation now or hereafter operated by any other motive power. \* \* \*

Section 1137 of the Northeast Rail Service Act amends the Rail Passenger Service Act (45 U.S.C. § 501) by adding a new Title V. Section 506 provides for the transfer of property used in providing commuter service either to a new Federal corporation to be known as "Amtrak Commuter" or to a local commuter authority electing to provide commuter service itself. Section 1145 of NERSA adds a section 508, which provides a formula for transferring Conrail employees engaged in commuter service. In addition, section 509 of Public Law 97-468 (9 Stat. 2543) recently amended the Rail Passenger Service Act to add new section 511, which provides:

"Sec. 511. APPLICABILITY OF LAWS.

"Any commuter authority operating commuter service under this title shall be subject to applicable laws with respect to such service, including, but not limited to, the Railway Labor Act (45 U.S.C. 151 et seq.), the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.)."

NJTROI is a local authority formed expressly for the purpose of operating commuter service abandoned by Conrail pursuant to section 1136 of NERSA. It is clear that section 511 of the Rail Passenger Service Act mandates a determination that NJTROI is a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective at least from January 1, 1983. However, the evidence supplied by NJTROI indicates that it operates diesel passenger trains over five of its eleven lines, which comprise the greater proportion of its total route miles and which include three of its five interstate routes. It provides service to six stations also served by Amtrak intercity trains, and in addition provides service to three other stations in New Jersey and New York also served by two other employers under the Acts; the Port Authority Trans-Hudson Corporation (Employer Status List No. 5369.1); and the Long Island Railroad (Employer Status List No. 3727). As stated above, NJTROI passenger trains run over 208.5 route miles of track not owned by NJTROI, and Conrail has freight trackage rights over 341.1 miles of NJTROI lines.

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This office has held in the past that where a local authority operates diesel-powered passenger service previously provided by a carrier subject to part I of the Interstate Commerce Act, that local authority has assumed the common carrier obligations of the prior covered employer and becomes itself a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. See Legal Opinions L-81-160 and L-82-217. NJTROI intended from its inception to operate a predominantly diesel-powered passenger system which is an integral part of a general, regional system of diesel transportation. It is therefore my opinion that New Jersey Transit Rail Operations, Inc., became an employer under the Acts effective with the date that it first hired employees, July 6, 1982.

It is clear that NJTBOI does not engage in rail transportation, including substitute rail service (see Legal Opinion L-43-121) and therefore is not a covered employer under the Acts. Moreover, it appears that NJ TRANSIT itself is a policy-making body concerned with mass transit for the State of New Jersey generally. The principal business of NJ TRANSIT being other than the transportation of people or property by rail, it cannot be considered to be a carrier by railroad subject to part I of the Interstate Commerce Act. Moreover, while under the regulations of the Board, NJ TRANSIT is under common control with NJTROI, the information available does not reflect that it provides any service in connection with the transportation of people or property by rail. Hence, it is my opinion that NJ TRANSIT is also not an employer under the Acts. See Board regulation 202.8 (20 CFR § 202.8).

Appropriate Forms G-341 giving effect to the foregoing are attached.

Dale G. Zimmerman

Attachments

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